

Agency Responsibilities in Reasonable Accommodation Determinations

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Workshop Objectives...

Participants should have a better

- **understanding of** Laws Governing the Employment of Individuals with Disabilities
- Definition and Factors Considered in determining who is a “Qualified Individual with a Disability”
- Factors considered in determining “Undue Hardships”
- Supervisor’s Role in Approving/Disapproving Reasonable Accommodations Requests
- Liability and Accountability of Agencies when Discrimination Occurs

PART 1:

REGULATIONS GOVERNING THE EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

Vocational Rehabilitation Act of 1973...

Section 501 mandates

(1) Non-discrimination by the Federal government in its own hiring practices.

(2) Requires affirmative action in the hiring, placement, and advancement of people with disabilities.

Vocational Rehabilitation Act of 1973...

Section 504 states that no qualified individual with a disability in the United States shall be

- (1) Excluded from,
- (2) Denied the benefits of, or
- (3) Be subjected to discrimination under any program or activity that either receives Federal financial assistance or is conducted by any Federal agency.

Vocational Rehabilitation Act of 1973...

Section 508 requires Federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public.

Americans with Disabilities Act of 1990

- Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship.
- **Extended protection of the disabled to private sector**
- **Certain provisions were extended to cover Federal employees**

Additional Guidance on
Employment
of Individuals with Disabilities
Equal Employment Opportunity
Commission (EEOC) Regulations

**Provides administrative and
judicial enforcement of Federal
EEO laws and regulations**

PART 2:

DETERMINING WHO IS A QUALIFIED INDIVIDUAL WITH A DISABILITY

Qualified Individual with a Disability

A qualified individual with a disability means one who satisfied the requisite skill, experience, education, and other job-related requirements of the position the individual holds or desires and who, with or without reasonable accommodation, can perform the essential functions of the position.

Is the Person Disabled?

Does the person

- have;
- have a record of; or
- is regarded as having

A Physical or Mental Impairment

Conditions that Generally do not meet the ADA's Definition of an Impairment?

- Persons Engaged in current Illegal Drug Use
- Sexual Behavior Disorders
- Compulsive gambling
- Pyromania
- Kleptomania

What is a Major Life Activity?

A basic activity that the average person in the general population can perform with little or no difficulty

Examples of Major Life Activities

- Caring for Oneself
- Performing Manual Tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Sitting
- Standing
- Lifting
- Reading
- Interacting with others
- Working
- Mental and emotional processes such as thinking, and

Does the Impairment Substantially limit the employee?

“Substantial limitation” is evaluated in terms of the severity of the limitation and the length of time it restricts a major life activity.

(Temporary illnesses are generally not considered to substantially limit a major life activity.)

Is the Duty/Task Involved an Essential Function of the Position Job Task?

(Factors to consider)

- Does the position exist to perform the function?
- Are there a limited number of employees among whom the job can be distributed?
- Is the duty identified in the position description
- Is the function highly specialized?
- Does the performance standard address the duty?

Can the Individual Perform the Key and Essential Functions of the Position?

- Can the person perform the duties with or without the accommodations?

and

- Is the person otherwise qualified to perform the position?

PART 3

REASONABLE ACCOMMODATIONS

What should be considered in Determining Reasonable Accommodations?

- Modification of the job application process
- Modification to the work environment or the manner under which the position held is customarily performed
- Modification that enables an employee with a disability to enjoy equal benefits and privileges of

Examples of Reasonable Accommodation

- Making existing facilities used by employees readily accessible and usable by individuals with disabilities
- Job restructuring
- Part-time or modified work schedules, including telecommuting
- Adjustments or modifications of tests, training materials, or policies
- Providing qualified readers or interpreters
- Reassignment to vacant positions

Does the Accommodations Cause an “Undue Hardship”?

Factors that should be Considered:

- impact on site operations,**
- financial resources,**
- number of workers,**
- size of the site,**
- overall size of the organization**
- impact on morale is immaterial**

**No dollar/cost limit defined -EEOC
rejects “cost-benefit” only approach.**

Does the Accommodations Cause an “Undue Burden”?

An employer is not required to lower quality or production standards to make an accommodation;

Nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Notes on “reasonable accommodation”...

- **May require tolerance of different behavior**
- **Changes with medical conditions**
- **May require reassignment to a vacant job**
- **May mean telecommuting/flexible schedules: hours, shifts, and leave**

Overview

Is the Person a Qualified Individual with a Disability?

- Does the person have an impairment?
- Does the impairment impact a major life activity?
- What is the major life activity?
- Does the major life activity substantially limit the person's ability to perform the activity?
- Is the person otherwise qualified to perform the essential functions of the job?
- Can the person perform the job with or without the reasonable accommodations?
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Steps in making Reasonable Accommodation Decisions

1. Review the particular job and determine its purpose and essential functions.
2. Consult with the individual with a disability to determine the specific skills and limitations.
3. Identify potential accommodations in consultation with the individual

Steps in making Reasonable Accommodation Decisions con't

4. Consider the preference of the individual and select the method that best serves both the individual and the command.
5. Determine if the requested accommodations can be provided without resulting in an undue hardship to the command.
6. Document your actions.

Part 4

Supervisory Rights and Responsibilities in Approving/Disapproving Reasonable Accommodations Requests

Supervisory Role in Reasonable Accommodations

Requests

- Receive and process Requests for Accommodations
- Participate in Exploring Options for Appropriate Resolution with Employee
- Determine if Individual is a Qualified Individual with a Disability
- Serve as Decision Maker for Requests for Accommodations
- If Request Denied, Issue Written Denial Advising Employee of Rights

Reasonable Medical Documentation

Management may request:

Documentation from an appropriate professional concerning the individual's disability and functional limitations in order to verify the existence of a disability and the need for an accommodation.

Management does not have the right to obtain all medical documentation and medical history of the employee or to request info that is unrelated to

Disclosure of Medical Information

Agencies must keep all information concerning the medical condition or history of its applicants and employees confidential. This includes medical information that an individual voluntarily tells his/her employer.

Once received, management must safeguard the access of employee's³⁰

What Happens when you Cannot Accommodate an Employee's request for Accommodations?

- Management must inform employee in writing that accommodations cannot be provided.
- If no vacancies exist, management prepares employee's separation.
- Job search should continue through the notice period.

What can an employee do to oppose a separation based on inability to perform?

- Initiate a grievance through the negotiated grievance procedure, if the collective bargaining agreement allows it.
- Appeal the separation to the Merit Systems Protection Board (MSPB) within 30 calendar days of the separation.
- File an EEO complaint based on disability within 45 days of the effective date.
- File a mixed case MSPB appeal which allows EEOC review if unsatisfied with the decision of the MSPB

To establish a prima facie case of disability discrimination, complainant must demonstrate:

- (1) He/she is an "individual with a disability";
- (2) He/she is "qualified" for the position held or desired;
- (3) He/she was subjected to an adverse employment action; and
- (4) The circumstances surrounding the adverse action give rise to an inference of discrimination.

What Happens when Discrimination is Found?

Agency may have to:

- Provide Back Pay and/or Front Pay
- Pay Attorney's fees
- Pay Compensatory damages for non-pecuniary damages
- Pay Pecuniary damages
- Post notice of violation of Federal statutes on Official Bulletin Boards and web sites
- Discipline responsible management officials
- Attend mandatory training

Part 5

Resources Available

Agency Personnel

EEO Counselors/Officials can provide detailed program requirements and procedures. They can also assist the command in ensuring measures are in place to meet Federal requirements.

Labor and Employee Relations personnel can assist in initiating appropriate personnel actions.

Agency Representatives can provide guidance to supervisors and managers, in

CNRSE EEO OFFICIALS

<u>EEO Complaints Manger</u>	<u>Activity</u>
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Public Works Center

Guantanamo Bay

Vernelle Hand	Kings Bay and tenants
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(912) 573-4721; DSN 573-4721NAS Key West

Nathaniel Nelson	NWS Charleston and Tenant Commands
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(843) 764-4300, ext. 15Gulfport; Pascagoula

DSN 794-4300, ext. 15

Computer/Electronic Accommodations Program

(CAP)
DoD established the Computer/Electronic Accommodations Program (CAP) in 1990 to improve accessibility for people with disabilities throughout the DoD and remove the cost of accommodations.

CAP offers electronic equipment at no cost to the employee or the command. The office also provides interpreters, readers, and other resources.

For more information contact the CAP³⁸

Job Accommodations Network (JAN)

JAN is a free consulting service designed to increase the employability of people with disabilities by:

- 1) providing individualized worksite accommodations solutions,**
- 2) providing technical assistance regarding the ADA and other disability related legislation, and 3)**
- educating callers about self-employment options.**

Useful Websites

- <http://www.opm.gov/employ/disabilities/plan.txt>
- <http://www.hrojax.navy.mil>
<http://janweb.icdi.wvu.edu/links>
- <http://www.jan.wvu.edu/soar/index.html>
- <http://www.eeoc.gov/docs/accommodation.html>
- <http://www.section508.gov>
- <http://www.eeoc.gov/docs/field-ada.html>
- <http://www.eeoc.gov/docs/preemp.html>

REMEMBER...The alert supervisor will...

- Spot “unstated” accommodation request
- Seek advice/guidance
- Know the accommodation-review process
- Begin the review process immediately
- Adopt a flexible management style
- Think “job related...business necessity”
- Explain decisions and document events
- Approach the disabled individual with a positive attitude and pass it down the line
- Modify the job, when/if necessary
- Eliminate unnecessary restrictions

TEST

1. When an employee has a physical or mental impairment his/her medical condition must be accommodated.
True False
2. A supervisor must respond to an employee in writing if a reasonable accommodation request is denied.
True False
3. A reassignment is an example of reasonable accommodation.
True False
4. A supervisor may notify other employees of a co-worker's medical condition, when the accommodations provided affect other employees.
True False
5. Who is responsible for approving/disapproving accommodation requests?
 - a. The supervisor/management officials
 - b. The EEO staff
 - c. The employee's physician
6. The employee should be consulted when attempting to provide reasonable accommodations.
True False
7. Supervisors are not required to consider reasonable accommodations requests for an applicant for employment.
True False
8. An employee with a disability that impacts a major life activity, but who who cannot perform the essential duties of the job is a "qualified individual with a disability" under the ADA.
True False
9. An employee who is advised that management cannot accommodate his reasonable accommodations request may file an EEO complaint.
True False

RESPONSE

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True **False**
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True **False**
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True False

This concludes your
“Agency Responsibilities in
Reasonable Accommodations
Determinations Training”

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hyperlink**

, type your name in the body of the

email that appears then